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JUN 08 2004****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

First Named Applicant: Gruhl)	Art Unit: 2151
)	
Serial No.: 09/757,046)	Examiner: Phillips
)	
Filed: January 8, 2001)	ARC9-2000-0128-US1
)	
For: COMPUTATIONALLY EFFICIENT, PLATFORM- INDEPENDENT DATA TRANSFER PROTOCOL)	June 8, 2004
)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

RESPONSE TO OFFICE ACTION

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

The following remarks are submitted in response to the Office Action dated June 4, 2004, rejecting all claims as being unpatentable under 35 U.S.C. §103 as being obvious over Chen et al. (USPN 6,507,856) in view of various secondary references.

The invention of the present application and Chen et al. were both owned by or subject to an obligation of assignment to IBM Corp. at the time the present invention was made, thereby removing Chen as a reference.

Furthermore, the proposed combination of Chen et al. with Leaf (USPN 5,754,772) would not arrive at Claim 1, as is otherwise alleged in the Office Action. Claim 1 requires not just the sizes of the leaves to be sent, but also the number of leaves in a node to be sent. Leaf, which has been used to remedy this

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admitted shortfall of Chen et al., sends only field sizes, but it does not appear that data representing the number of fields to be sent in Leaf is transmitted.

Additionally, Leaf teaches sending the sizes of fields in the event that data types have variable sizes, but nothing in Chen et al. has been pointed to indicating that Chen et al. deals with variably sized data elements. Accordingly, the reason Leaf motivates the use of sending fields indicating data sizes has not been tied to anything in Chen et al., rendering the proposed combination improper.

With respect to the rejection of independent Claim 9 as being obvious over Chen et al. and Leaf and further in view of Snider (USPN 5,991,893), used as a teaching of a RPC call, the proposed combination fails to find the requisite prior art suggestion. Instead, the examiner observes that Snider shows that RPC calls are "well known" without tying in the allegedly well known element in the specific combination claimed, see MPEP §2143 (in particular the discussion of allegations that something is "well known"). The section of Snider (col. 5, lines 53-59) used as a teaching of ensuring data integrity has not been tied to any comment in Chen et al. that data integrity is a problem, meaning that the proffered suggestion to combine has not been shown to bear any particular relevance to the reference with which it is proposed to be combined, rendering the *prima facie* case defective.

The same general comments apply to the rejection of independent Claim 16 as being obvious over Chen et al. and Leaf and further in view of Mishra (USPN 6,345,315), used as a teaching of a platform independent message. As before, the examiner proposes to combine Mishra with the other references simply because Mishra allegedly shows something is "well known" without tying the reason Mishra uses platform independent messages (overcoming the problem of software incompatibility) to any reason Chen et al. might give to use them. Nothing has been pointed to in Chen et al. indicating that software incompatibility is a

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problem, so Mishra's reason for using its messages has not been shown to bear any relevance to Chen et al. Indeed, the value of using such a concept in the context of the present invention is taught only in the present specification, which is not part of the prior art.

The rejection of dependent Claim 5 is based on the allegation that it is "implicit" that Chen et al. uses one of two data types, node and leaf. First, Claim 5 specifies that *only* two data types may be used, with the limitation "only" having been ignored in the rejection. Second, to the extent that what the examiner means by "implicit" is "inherent", this concept can be used only if a reference necessarily has the allegedly inherent characteristic, MPEP §2112, which does not appear to be the case with Chen et al. More particularly, nothing has been pointed to in Chen et al. showing that it necessarily has two and only two data types.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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